

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL No.524 OF 2000

The New India Assurance Co. Ltd. APPELLANT

Vs.

Mrs. Subodhini R. Mayanikar & Ors. RESPONDENTS

None appears for Appellant.

Mr. R. C. Sequeira for Respondent Nos. 1, 3
& 4.

CORAM : Dr. S. RADHAKRISHNAN, J.

DATE : JULY 6, 2006.

P.C.

. None appears for the Appellant. It appears that earlier Mr. A. K. Chaphekar, Advocate was appearing for the Appellant. After his demise, Court notice was issued to the Appellant - New India Assurance Co. Ltd. Court notices have been duly served on the Appellant on 9th February, 2005. Over and above, the learned Advocate Mr. R. C. Sequeira appearing for Respondent Nos. 1, 3 and 4 has personally issued notice on 27th June, 2006, informing that the above matter is kept for final hearing. The xerox copy of the said notice dated 27th June, 2006 is taken on record and marked "X" for identification.

However, no one is appearing for Appellants. The learned counsel for Respondent Nos. 1,3 and 4 Mr. R. C. Sequira submitted that Respondents were awarded Rs.3,12,000/- by the Motor Accident Claims Tribunal, Mumbai. Said sum was awarded alongwith interest at the rate 8 per cent per annum from the date of Application till realisation of the amount. Mr. Sequira points out that the entire decretal amount has been deposited by the Appellant in the Motor Accident Claims Tribunal at Mumbai. Mr. Sequira also points out that though this Court had permitted the Respondents to withdraw the amount, on furnishing security, Respondents could not furnish security and the amount is still lying in the Motor Accident Claims Tribunal at Mumbai, duly invested in a bank in a Fixed Deposit.

2. Mr. Sequira points out that Respondent No.2 - Mrs. Nirmala Vithal Mayanikar, the mother of the deceased had passed away during pendency of this appeal and

that she had left no other legal heirs. Today only Respondent No.1 - Mrs. Subodhini Ravindra Mayanikar being widow of the deceased Ravindra Mayanikar and two children being Respondent Nos. 3 and 4 namely Dhiraj Ravindra Mayanikar and Amit Ravindra Mayanikar, are alive. The said Dhiraj and Amit have become adults, and that they are ready and willing to give an undertaking that the entire amount which is lying invested by the Motor Accident Claims Tribunal may be handed over to their mother Respondent No.1 Mrs. Subodhini Ravindra Mayanikar. Mr. Sequira states that both sons will file a joint undertaking before the Motor Accident Claims Tribunal stating that they have no objection, whatsoever in handing over the entire decretal amount alongwith accrued interest as invested in the bank to their mother Subodhini R. Mayanikar.

3. Under the aforesaid facts and circumstances, above appeal stands dismissed in default. However, the Registrar, Motor

Accident Claims Tribunal, Mumbai is directed to allow Respondent No.1 Mrs. Subodhini Ravindra Mayanikar to withdraw the entire decretal amount alongwith accrued interest, subject to the condition that both Respondent Nos. 3 and 4 - Dhiraj R. Mayanikar and Amit R. Mayanikar shall file an undertaking before the said Registrar that they have no objection to hand over the said amount to respondent No.1 Mrs. Subodhini Ravindra Mayanikar.

4. Mr. Sequira also points out that the widow Respondent No.1 has been fighting this litigation nearly for 18 years and that she has not been able to get any money so far, whereas the Appellant has been totally casual in prosecuting this appeal, even though Court notice has been served in February 2005, till today, the Appellant has not chosen to engage any advocate to appear before this Court. Under these circumstances, Mr. Sequira is pressing for costs. Appellant shall pay costs quantified at Rs.5,000/- to the respondent No.1 within two weeks from today. Parties,

including the Registrar, Motor Accidents
Claims Tribunal to act upon a true copy of
this order, duly authenticated by the Personal
Assistant / Court Shirastedar.

[Dr. S. RADHAKRISHNAN, J.]